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THE UNIVERSITY OF ALBERTA

THE DUTIES OF THE PROVINCIAL GOVERNMENT  
TOWARD THE AGING HOMEOWNER

BY



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A THESIS

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41

THE UNIVERSITY OF ALBERTA  
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The undersigned certify that they have read,  
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acceptance, a thesis entitled The Duties of the  
Provincial Government Toward the Aging Homeowner  
submitted by Helmut Eppel in partial fulfilment of  
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## ABSTRACT

The purpose of this paper is to examine current legislation as it exists in the Province of Alberta designed to protect homeowners over sixty-five years of age from excessive exploitation in instances of private sales or expropriation of residential real estate property. In conjunction with this the mental, physical, cultural and social changes of these individuals brought about as a result of aging will be examined. Recommendations based on the findings are made to the Government of Alberta for legislative changes to protect those peoples investment in their homes.

The hypothesis to be tested stipulated that the aging process along with the increasing complexities of modern society placed the aged homeowner into a disadvantaged position when faced with the prospect of disposing his home. In instances when the purchaser is represented by a professional buyer who actively solicits the aged homeowner to dispose of his home by private sale or as a result of negotiations leading to expropriation, the disadvantages of the vendor may reach a level where his protection by means of provincial legislation appears to be imperative.

Library research was initially employed to discover the scope of existing legislation in the Province of Alberta relating to real estate transactions as it pertains to the aged homeowners. Further library research was conducted into the present level of knowledge in geriatrics pertaining to the decision making process. Ten case studies conducted over a period of two years were used to verify this information. Lack of funds prohibited more extensive case analyses.





It was found that existing legislation does not protect the aged from excessive exploitation. Case studies revealed that some of the aged appear to have been exploited by buyers of property to the point where their life's savings were substantially reduced. The aging process did indeed create conditions which can be held to be directly responsible for these cases of exploitation.

The study resulted in a recommendation made to the Government of the Province of Alberta to create a review board by means of legislation whose function will be the examination of all sales of residential real estate made by the aged with the exception of sales to individuals who intend to reside on these properties. Without approval from the Board these sales will not become final. It should be the object of this Board to be assured that the vendor is aware of the approximate market value of his property and is satisfied with the selling price.





## TABLE OF CONTENTS

	PAGE
INTRODUCTION . . . . .	1
Historical Background	
CURRENT PROVINCIAL LEGISLATION . . . . .	5
Powers of the Provincial Government; The Land Titles Act; The Expropriation Procedure Act; Legislation Dealing with the Real Estate Agent; The Ombudsman Act; The Real Estate Agent	
PROBLEMS OF OLD AGE. . . . .	23
The Aging Process; Physical Changes; Mental Changes; Social Changes; Cultural Trends	
THE NEGOTIATION FOR SALE . . . . .	35
The Intial Approach--Scanning; Recurring Visits	
RECOMMENDATIONS. . . . .	44
SUMMARY. . . . .	46
BIBLIOGRAPHY . . . . .	48



## LIST OF TABLES

TABLE		PAGE
1	Expropriation Procedure of the Province of Alberta . . . . .	10
2	Complaints received by the Ombudsman in the area of Expropriation or Real Estate Transactions . . . . .	16





## INTRODUCTION

Historical information available to us today clearly indicates that in most societies of the past and present the old and feeble were at a disadvantage compared to their younger generations. Situations in which the young could gain power, wealth or instruments of pleasure were seldom left unexploited even in cases where the resulting struggle would end in suffering or the death of a close family member. In many of these instances the survival of the group was said to be the prime motivator for these acts of aggression. Closer examination may reveal greed to have been the driving force.

It is unfortunate that in the "civilized society" of today the same problem may exist. Exploitation is still common, and though the means often used in its processes may be perfectly legal according to the letter of Canadian law, the effect on the aged victim is still one of prolonged suffering or even death. The tactic seems to have been changed from an overt and obvious activity leading to physical injury, to a more subtle but equally devastating covert activity causing mental torment.

Should the above statements sound like an overall condemnation of our system it must be borne in mind that from the point of view of those elderly persons who happen to have been taken advantage of the system certainly does not seem just especially since there does not seem to be a means of recourse.





This paper will attempt to explore the extent and magnitude of some of these injustices as they affect the elderly homeowners. The problem appears to be particularly concentrated in larger cities and thus the study will be limited to the geographic area within the boundaries of the City of Edmonton. The actual transactions to be studied will be limited to private residential real estate sales as well as the expropriation of residential real estate in which the vendor is over the age of sixty-five. Current legislation within the Province of Alberta as it relates to the above will be critically evaluated. The expectation is that the findings in this study can and will be presented in the form of proposals for legislative changes designed to protect the aged homeowner from oppressing exploitation.

Since this paper is written as a study of real problems as opposed to theoretical ones, it will be necessary to accept the environment as it exists. Human nature seems to require man to continually bargain for selfish advantages and it will therefore be assumed that exploitation is to some degree a norm that will continue to exist in our society and that the effectiveness of government legislation will be limited to the role of preventing the oppressive exploitation. This paper will therefore be concerned with the devising of means adequate for the proper protection of the aged's investment in his home.

#### HISTORICAL BACKGROUND

For an understanding of the problems that the aged homeowner faces in the light of current provincial legislation, a brief history of Alberta is essential.



The majority of the aged living in this province have to some extent participated in its short history. To fully appreciate the decision making processes as well as the evaluation techniques and methods of establishing priorities currently utilized by the aged among us it will be necessary to discover the decisions and relating circumstances of the past.

European penetration into what is now the Province of Alberta dates back to approximately 1743, at which time a French explorer by the name La Verendrye is said to have made a journey to the foothills of the Rocky Mountains.<sup>1</sup> Soon the lucrative fur trade lured settlers to the west. During the 1850's the annual return from the Mackenzie River district alone amounted to 12,000 Pounds Sterling.<sup>2</sup>

The first wheat was grown in Lac La Biche in 1855<sup>3</sup> but farming did not start on a large scale until about 1875 when the disappearance of the buffalo forced natives as well as settlers to produce food and find revenue by other means.<sup>4</sup> It is interesting to note that this singular occurrence destroyed the Prairie Indians' way of life so effectively, that up to the present, and presumably for many years to come, they have been alienated from their culture and their land.<sup>5</sup> Although such a change may not be considered as drastic when the aged in the metropolitan centres are

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<sup>1</sup>Walter Sheppe, First Man West (Montreal, 1962), p. 10.

<sup>2</sup>Harold A. Innis, The Fur Trade in Canada (Toronto, 1964), p. 335.

<sup>3</sup>Alberta Through the Years, Publicity Bureau of the Government of Alberta (Edmonton, 1967), p. 21.

<sup>4</sup>The Fur Trade in Canada, op. cit., p. 393.

<sup>5</sup>Time, Canadian Edition, Volume 97, Number 5 (February 1, 1971), p. 56.





examined, it must be kept in mind that their way of life has undergone similar changes.

In 1883 the railway arrived from the East and the District of Alberta was carved from the Northwest Territories.<sup>6</sup> It contained 255,285 square miles, with land made available to settlers for homesteads.<sup>7</sup> Alberta, upon becoming a province in 1905, saw the formation of its own legislature which, among many other powers ceded to it by the federal government, was granted the right to legislate and administer laws pertaining to real property. It was during this period in Alberta's history that the highest influx of homesteaders took place as evidenced by an increase in the population from 65,000 in 1901 to 250,000 in 1908.<sup>8</sup> Edmonton became a city in 1904<sup>9</sup> and within sixty five years its population increased to its present level of 400,000.

The majority of today's aged have an agricultural background, and depend to some degree on their family and friends for companionship and survival. The relatively simple life of their productive years will be compared later on to the complexities and confusions of today.

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<sup>6</sup>Alberta Through the Years, op. cit., p. 20.

<sup>7</sup>Ibid., p. 2.

<sup>8</sup>Archibald Oswald MacRae, History of the Province of Alberta, Vol. 1 (Edmonton, 1912), p. 461.

<sup>9</sup>Ibid., p. 446.



## CURRENT PROVINCIAL LEGISLATION

### POWERS OF THE PROVINCIAL GOVERNMENT

As mentioned earlier, Alberta was granted the power to legislate and administer transactions in real property within its boundaries when it became a province. The British North America Act of 1867 was quite specific in this area.

"92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,-

...13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section."<sup>10</sup>

### THE LAND TITLES ACT

Current legislation governing property transactions is contained in the Land Titles Act of 1955. Its enforcement is assigned to the Department of the Attorney General.<sup>11</sup>

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<sup>10</sup>Maurice Ollivier and Roger Duhamel, British North America Acts and Selected Statutes (Ottawa, 1962), pp. 26-27.

<sup>11</sup>The Land Titles Act, (Office Consolidation), Department of the Attorney General (Edmonton, 1967), p. 5.





The Alberta government has adopted the Torrens system of land registration. The registrar, appointed by the Lieutenant Governor in Council, must maintain a central registry within his registration district.<sup>12</sup> The certificate of title is retained in the central registry with a duplicate being issued to the title holder which is deemed to be correct only for the time and date of its issue.<sup>13</sup> A "day book" must also be kept by the registrar in which the exact time of registration of every instrument relating to the certificate of title is recorded.<sup>14</sup> Should a dispute arise concerning registration of mortgages, liens, caveats or transfers the date and time recorded in the day book will establish their priorities. Any requested changes of the certificate of title must be submitted to the registrar on the appropriate form as approved by the Lieutenant Governor in Council.<sup>15</sup> There are currently forty-two such forms.

The Land Titles Act makes no provisions for persons over the age of sixty-five, who, for convenience, will be referred to below as "the aged".

The only persons who may not enter into a valid real estate contract are lunatics, infants or persons of unsound mind. A "lunatic" is deemed to be "...any person found by any competent tribunal or commission 'de lunatico inquirendo' to be a lunatic".<sup>16</sup> Once a person has been judged

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<sup>12</sup>The Land Titles Act, p. 4.

<sup>13</sup>Victor Di Castri, Thom's Canadian Torrens System (Calgary, 1962), p. 36.

<sup>14</sup>The Land Titles Act, p. 6.

<sup>15</sup>Ibid., p. 36.

<sup>16</sup>Ibid., p. 2.



a lunatic he is committed to a mental institution.

An "infant" is currently any person under the age of twenty-one, although legislation is presently being prepared to lower this age to eighteen.

A "person of unsound mind" means "...any person not an infant who not having been found to be a lunatic has been found on like inquiry to be incapable, from infirmity of mind, of managing his own affairs".<sup>17</sup> The major difference between a lunatic and a person of unsound mind is that the latter may not have to be confined in an institution.

During times of extreme stress any normal, healthy person may commit actions which may be attributed, upon reflection later, to temporary lack of mental competence.<sup>18</sup> As will be shown in this paper, the aged tend to be much more susceptible to mental stress than a younger person.

Let us assume that an aged homeowner sold his residence and later, discovering that he had in all probability acted irrationally as a result of stress exerted on him by the purchaser, decided to review the exchange with the thought in mind of voiding the sales agreement. Would that homeowner have any grounds for legal recourse? One of the questions that is asked in this paper is whether or not such stress could in fact create a state of temporary "unsoundness of mind" during which the transfer of real estate takes place. The agreements signed would be void only if a court later finds these circumstances to have existed. Although it is possible, under the Land Titles Act, to plead the case in this manner, it is highly improbable that the court will decide for the plaintiff. The

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<sup>17</sup>Ibid., p. 2.

<sup>18</sup>Alfred M. Freidman and Harold I. Kaplan, eds., Comprehensive Textbook of Psychiatry (Baltimore, 1967), p. 1597.



difficulties seem to be the following:

1. In Alberta such pleas are a rare occurrence and for that reason alone the courts, lacking in experience to deal with them, attempt to avoid accepting such presentations as evidence.
2. It is difficult to document the psychological state of mind of the homeowner during the period under question in a manner which is legally acceptable.
3. The expected gains may not warrant the emotional stress or the monetary expenditure.
4. No person, and especially not an older one already having difficulty enough accepting the physical and mental state of deterioration commonly called aging, is particularly anxious to have himself labelled as a mental incompetent, even if this state can be proved to have lasted only a short time.

It may be of interest, at this time, to point out that in the field of forensic psychiatry the American state of New Hampshire as early as 1869

"...adopted a rule of responsibility which placed psychopathology in the same category as physical pathology and other scientific and technical problems which required expert assessment and diagnosis. Psychiatric experts were to testify to the best of their ability, in accordance with their highest standards of professional competence, concerning the mental state of the person they had investigated clinically. Their data and opinions, like all information obtained from experts on technical questions, then became part of the complete summary of facts available to the judge or jury. The psychiatric expert's testimony, treated as one set of facts among many, was then to be evaluated by the judge or jury to ascertain its proper relationship to the legal requirements of mens rea and responsibility".<sup>19</sup>

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<sup>19</sup>Comprehensive Textbook of Psychiatry, op. cit., p. 1597.





In Alberta the role of the psychiatrist in the courtroom is becoming increasingly important and today's judges tend to show more concern to matters of mental competence and comprehension than the judges before them.

#### THE EXPROPRIATION PROCEDURE ACT

Table 1 summarizes the steps taken by the provincial government in the process of expropriation. Municipalities and other authorized expropriating authorities (there are for example over 2000 such agencies in Ontario)<sup>20</sup> must follow a slightly different procedure. The Public Utilities Board assumes the duties of an arbitrator in their disputes.<sup>21</sup> Any party, dissatisfied with the arbitration award, can appeal to the courts.

The complicated nature of the expropriation procedure can be readily observed from Table 1. It is apparent that legal council must be obtained by most persons wishing to proceed beyond the informal negotiation stages to present their case either before the court or the council or arbitrators. It is beyond the scope of this paper to examine the formal negotiations. It will be assumed however that once a legally recognized third party takes an active part in the negotiations, the aged homeowner will not suffer from exorbitant exploitation. It is necessary, nonetheless, to show all aspects of the expropriation process in order to familiarize the reader with the complexities faced by the aged homeowner should he decide not to accept any offers received during the informal

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<sup>20</sup>Expropriation: Public Purpose Vs. Private Property, Civic Affairs (Toronto, November, 1966), p. 4.

<sup>21</sup>The Expropriation Procedure Act (Office Consolidation), Department of the Attorney General (Edmonton, 1968), p. 13.



TABLE 1

EXPROPRIATION PROCEDURE OF  
THE PROVINCE OF ALBERTA

Negotiations with homeowner

↓  
Deposit of plan showing property  
to be expropriated with land  
registry or a notification  
thereof

↓  
The registered owner of the  
property is notified by  
registered mail within  
thirty days

↓  
The Minister will make an offer  
of full settlement within three  
months

↓  
The owner must show his  
dissatisfaction with offer  
by replying in writing  
within sixty days or the  
offer is binding

↓  
Either party may elect, but  
both must agree, on  
arbitration

↘  
Compensation determined by  
court if either party  
disagrees with arbitration

↙  
Either party may appeal to  
the appellate division of  
the supreme court of the  
province

↓  
Either party may apply for  
grant of leave to appeal  
to the Supreme Court of  
Canada





negotiation.

One other unfortunate omission in the Expropriation Procedure Act, as pointed out by the Institute of Law Research and Reform in their working paper on Principles of Compensation, is that "...there is no provision whereby the expropriating authority is obliged to make any payment at the time of the taking".<sup>22</sup> They further note that the payment of interest is also not mentioned in the Act, yet they add that it has been the practice of the courts and the Public Utilities Board to allow interest at the nominal rate of about five percent.<sup>23</sup>

#### LEGISLATION DEALING WITH THE REAL ESTATE AGENT

Real estate agents, as well as their salesmen, play an important role in residential sales. Most private sales of residential property in the Province of Alberta are made through a broker. The commissions paid to the broker upon sale of a residence amount to between five and seven percent of the selling price. The broker offers relatively little economic benefits to the homeowner for his substantial charge. Most of the owners, interested in selling their home in order to purchase another, are well aware of the market value of their current residence. They can obtain printed, blank interim agreement for sale forms at any stationery store. Placing an advertisement in the local Journal may cost two dollars per day. Why would these people hire the services of a broker for up to \$1,750.00 (calculated at seven percent of a \$25,000.00 house), when they could perform the same functions themselves for less than fifty dollars?

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<sup>22</sup>Principles of Compensation, Institute of Law Research and Reform (Edmonton, 1971), p. 78.

<sup>23</sup>Ibid., p. 83.



Obviously he must provide some service worth the difference! Bartering for the exchange of goods has practically disappeared from our society. The average homeowner may not be equipped with the necessary bargaining skill to negotiate the sale of his home. Furthermore, it appears as if the act of bargaining is not considered to be commonly acceptable behavior. These reasons along with the mutual mistrust commonly exhibited between vendor and purchaser may satisfy the needs of the vendor for the acquisition of a broker's expensive services.

The Real Estate Licensing Act places certain constraints upon prospective members of organizations trading in real estate. All agents and their salesmen must be licensed. The Superintendent of Insurance, responsible to the Attorney General, administers the Act. Transgressions by licensees against sections of the Act are rigidly sanctioned whenever the offence is blatantly obvious and guilt is documented in such a way that the Superintendent is assured of no chance of error. The Act, however, does not specify certain acts of behavior on the part of licensees which would be considered undesirable for the public interest and which may not be easy to prove. During an interview with an officer of the superintendent's staff, it was disclosed that a number of licensees were known to be operating against the public interest, this disclosure was based on the numerous complaints received against them. Apparently no action could be taken since these offenses, although occurring quite frequently, were difficult to prove to the satisfaction of the superintendent. It appears then that the number of complaints alone, even against one particular licensee, are not deemed to be sufficient proof of transgression. The superintendent is not concerned with the numerous complaints received by his office unless these can be substantiated



by documentation. The only ones effectively dealt with are cases in which the licensee's guilt is indisputable. And yet though the superintendent's office has been attempting to apprehend some licensees for a number of years, many of these individuals continue their operations in the same old way without legal obstruction.

These unprovable offenses are usually the result of the homeowner's or the buyer's gullibility or inexperience when accepting the "professional" advice or verbal promise of the licensee. Since the broken promises are seldom put in writing, there is little anyone can do for the injured party, under the currently accepted policies of the superintendent's office.

There seems to be no reason why these policies could not easily be revised, should the spirit of the Act be enforced. Since there are at least two ways in which this could be accomplished. Every license "...expires on the 30th day of September of each year".<sup>24</sup> A renewal may be obtained on "...application to the Superintendent and payment of the prescribed fee".<sup>25</sup> The superintendent is under no obligation to renew the license if "...after due investigation made by him or his representative is for any reason of the opinion that the applicant should be not granted a license".<sup>26</sup> The superintendent also has the power to suspend or cancel a license "...where in his opinion such action is in the public interest".<sup>27</sup>

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<sup>24</sup>The Real Estate Agents' Licensing Act (Office Consolidation), Department of the Provincial Secretary, (Edmonton, 1969), p. 4.

<sup>25</sup>Ibid., p. 4.

<sup>26</sup>Ibid., p. 4.

<sup>27</sup>Ibid., p. 4.





Since the term "public interest" is not defined in the Act, it must have been the intent of the legislators to allow the superintendent to interpret it as he sees fit. It is unfortunate that individuals employed in a bureaucratic system tend to pass decisions associated with a greater amount of uncertainty upward to their superiors.<sup>28</sup> Should their superiors fail to commence actions as well, then the situation must simply be contained by the superintendent's office, at the expense of the public.

An individual whose license has been suspended or cancelled may appeal to the Provincial Secretary whose decision is final.<sup>29</sup> The numerous complaints received by the superintendent concerning certain licensees would indicate almost conclusively that the public interest is not served.

The aged homeowner who seems to be the most common victim of these ruthless brokers deserves to be protected--and it is the duty of the superintendent to cancel their license.

Unfortunately just about anyone can join the vastly expanding real estate business, which during 1969 employed over 800,000 licensed members in the United States and Canada.<sup>30</sup> A prospective salesman or broker must only possess the following qualifications. He must

1. be able to obtain a \$1,000 bond,
2. pass an exam set by the Superintendent of Insurance, designed for an elementary school graduate,

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<sup>28</sup>Harold L. Wilensky, Organizational Intelligence (New York, 1967), p. 185.

<sup>29</sup>The Real Estate Agents' Licensing Act, p. 4.

<sup>30</sup>Robert W. Semenow, Questions and Answers on Real Estate (Englewood Cliffs, New Jersey; 1969) p. 21.



3. be over twenty-one years of age,
4. have lived in Alberta for a minimum of three months,
5. be employed by a licensed real estate agent.<sup>31</sup>

A further grave shortcoming by the office of the Commissioner of Insurance is the assumption that the real estate boards are capable of controlling their members' actions within the framework of their published standards of ethics. Any group formed to promote itself for the sole purpose of increasing its members' profits by "monopolistic"-action designed specifically to reach a maximum level of autonomy, free from government interference and under the pretense of representing "professionals" should be controlled to protect the interest of the public. It would be naive to assume that any of their members, faced with the possibility of earning a substantial commission, would reflect on the Canadian Association of Real Estate Boards' golden rule "whatsoever ye would that men should do to you, do ye even so to them".<sup>32</sup>

#### THE OMBUDSMAN ACT

The Ombudsman Act of 1967 has contributed nothing to the creation of new real estate legislation, it has not contributed to the amending of existing legislation, nor apparently has it benefited anyone who made representation to the ombudsman in real estate matters. In his report to the legislature during 1970, the ombudsman reported the cases as shown in Table 2. These investigations were taken from the Report of the Ombudsman for the Period January 1 to October 31, 1969. They were selected from all the cases handled by his

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<sup>31</sup>The Real Estate Agents' Licensing Act, p. 5.

<sup>32</sup>Primary School Course, Edmonton Real Estate Board (Edmonton, 1967), p. 48.



TABLE 2

COMPLAINTS RECEIVED BY THE OMBUDSMAN IN  
THE AREA OF EXPROPRIATION OR REAL ESTATE TRANSACTIONS

1967

Dept. of the Attorney General	
67-110-9 Disposition of property. . . . .	.Abandoned
Dept. of Highways and Transport	
67-140-5 Highway expropriation. . . . .	.Not Justified
Provincial Planning Board	
67-340-1 Compensation for expropriation of land for highway . . . . .	.Not Justified
Complaints Against Cities, Municipalities, Towns, Etc.	
67-400-3 Expropriation of property. . . . .	.Discontinued

1968

Dept. of Lands and Forests	
68-170-11 Terms of homestead sale. . . . .	.Not Justified
68-170-12 Dispute over land purchase . . . . .	.Abandoned
Complaints Against Cities, Municipalities, Towns, Etc.	
68-400-26 Expropriation proceeding by a town . . . . .	.No Jurisdiction 11-1
No Specific Complaint Made	
68-450-9 Expropriation Procedures Act . . . . .	.Declined 14-1 (a)





1969

Dept. of Highways and Transport		
69-140-11 Purchase of Property . . . . .		Not Justified
69-140-12 Expropriation . . . . .		Not Justified
69-140-37 Land expropriated for service road. . . . .		Declined 12-1(a)
Public Trustee		
69-330-1 Property seizure. . . . .		Abandoned
Public Utilities Board		
69-270-3 Decision re house expropriation . . . . .		No Jurisdiction 11-1
69-270-4 Land expropriation decision . . . . .		Discontinued
69-270-5 Pipeline expropriation. . . . .		Discontinued
Complaints Against Cities, Municipalities, Towns, Etc.		
69-400-11 Land Expropriation. . . . .		No Jurisdiction 11-1
69-400-26 County construction damages private property. . . . .		No Jurisdiction 11-1
69-400-30 Land sale . . . . .		No Jurisdiction 11-1
Complaints Against Federal Departments or Agencies		
69-410-14 Expropriation of Land . . . . .		No Jurisdiction 11-1
Private Matter		
69-420-23 Municipal expropriation . . . . .		Withdrawn
69-420-39 Validity of Agreement for Sale. . . . .		No Jurisdiction 11-1
69-420-58 Sale of house . . . . .		No Jurisdiction 11-1
No specific Complaint Made		
69-450-8 Refusal to sell land. . . . .		Withdrawn <sup>33</sup>

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<sup>33</sup>Report of the Ombudsman, pp. 19-45.



department because they dealt with disputes over expropriation and other real estate transactions. All investigations falling within the classification given above were included in Table 2. It is most interesting to note that not one case was rectified in this classification whereas the overall average of rectifications for his office in 1969 was 31.69 percent.<sup>34</sup>

An investigation was carried out by the staff of the ombudsman in all cases, although in some instances his powers were limited by legislation. His duties and functions under the Ombudsman Act are

"...to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department of the agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment".<sup>35</sup>

In effect, the office of the ombudsman was established to provide the public with an additional means of inquiry into the powers of provincial civil servants. The Act further limits the powers of the ombudsman to cases which have no further avenues of appeal under provincial legislation or which are not currently under appeal.<sup>36</sup>

The poor record of the ombudsman's office when dealing with expropriation and other real estate investigations cannot readily be explained. It must certainly involve the ambiguity usually present when evaluating any abstract benefits derived from future expectations of property. Eight of the investigations in Table 2 were listed by him as

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<sup>34</sup>Report of the Ombudsman for the Period January 1 to October 31, 1969 (Edmonton, 1970), p. 5.

<sup>35</sup>The Ombudsman Act (Office Consolidation), (Edmonton, 1969), p. 3.

<sup>36</sup>Ibid., p. 4.



being outside his jurisdiction, as per Section 11 (1) quoted above.

Another case was declined for reasons of Section 12 (1) (a), implying that the complainant had other avenues of appeal open to him under other provincial acts.<sup>37</sup> Section 14 (1) (a) may be used by the ombudsman to reject cases in which he is of the opinion that other adequate remedies are open to the complainant.<sup>38</sup> The balance of the investigations were found to be not justified or were abandoned. It would appear, judging from the results, that the office of the ombudsman is facing the same dilemma that the Superintendent of Insurance is facing.

It is interesting to note that in the area of disputes between accident victims and the Workmen's Compensation Board, an area which has many similarities to the one under study in this paper, the ombudsman has made the following statement

"...I am satisfied that a man has a right to know what he is up against, either good or bad, ... 'ignorance of the law is no excuse' should not prevail in an area where the educational level is predominantly lower than the average, as it is in this particular area".<sup>39</sup>

The National Housing Act of 1944 was generally accepted as federal legislation designed to complement existing provincial legislation. Yet it only deals with financial assistance to governments or individuals

"...to promote the construction of new houses, the repair and modernization of existing houses, the improvement of housing and living conditions, and the expansion of employment in the postwar period".<sup>40</sup>

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<sup>37</sup>Ibid., p. 3.

<sup>38</sup>Ibid., p. 4.

<sup>39</sup>Report of the Ombudsman, p. 13.

<sup>40</sup>The National Housing Act (Ottawa, 1946), p. 3.





The federal government has refrained from crossing into areas reserved for the provincial government by the BNA Act.

#### THE REAL ESTATE AGENT

A number of residences are being purchased yearly from the aged by the Province of Alberta, and by municipalities and corporations empowered to acquire land by expropriation. The Expropriation Procedure Act of 1961 outlines the steps to be followed by these agencies should they not reach a satisfactory agreement with the owner by means of negotiation. Table 1 summarizes these steps as they apply to expropriations by the Province of Alberta. Throughout the formal and informal negotiation process the only concern of both parties is to reach a mutually agreeable level of compensation by making the least possible concessions. Each side must continually evaluate the expected gains of a continuation of this procedure against the actual and the opportunity costs.

Negotiations for a number of adjoining residences for the purpose of some new and larger development, either a broker or a full-time property purchasing officer may be required. Agencies which do not buy sufficient properties to warrant the use of a full-time buyer usually hire a broker to assemble the properties for them. Should the agency qualify and be authorized to expropriate property, then the broker or buyer will attempt to negotiate for the properties prior to commencement of formal expropriation proceedings.

The use of a broker, by the smaller agencies, is necessary for a number of reasons:

1. He has experience in assessing property values.
2. He is thoroughly familiar with the legal technicalities



relating to real estate transactions.

3. He is aware of the most suitable purchasing techniques enabling him to obtain the required property at the lowest price.
4. He is licensed by the Alberta government to deal in real estate.

Item 3 above is the prime reason for retaining the broker. The agency, wishing to purchase the properties at the lowest cost, agrees, prior to the initial negotiations, on the prices it is willing to pay for all the properties. The broker's remuneration depends on his ability to approximate this amount. A bonus may be paid to him in case of a lower acquisition expenditure.

The agency initially sets aside a fund for land acquisition. The amount though only an estimate, is the expected cash outlay for this portion of the total development budget. The broker is not necessarily informed of this amount, instead he may be advised of a lower appropriation per residence, thus allowing for contingencies. The amount disclosed to the broker will also be subject to increase should the agency not find a broker willing to accept these terms or should the broker, after initial attempts to buy properties at the estimated price, find that his valuations have been in error.

The purchase of property by the agency prior to the date of its actual need requires the outlay of cash which could have been used more profitably in the meantime. Assuming the agency's project will not require possession of the property for a number of years, as is usually the case, and further assuming the opportunity costs to be ten percent per annum, it is a simple matter to calculate that the agency could increase its



offer to the homeowner by ten percent per annum without incurring any financial loss.





## PROBLEMS OF OLD AGE

The previous chapter has outlined some of the problems encountered during and after the sale of one's home. Unfortunately it appears unlikely that the average aged homeowner of today has participated in more than two real estate sales, is familiar with current legislation or has the desire or ability to gain such information from the consolidated acts made available by the Queen's Printer.

The best way to avoid trouble, it would seem, is to avoid selling a house and the aged homeowner is attempting just that. But if he has owned his home for many years, as is the case with most aged homeowners in metropolitan areas, then chances are that he resides in or near the city centre. The homes in his area may be part of a slum or they may be part of an old upper class residential sector. The expansion of the city may have moved what was once a suburb into the central business district, or it may have rezoned the land in his area for high-rise developments. He may have planned to reside in his home until his death, and have taken little interest in the surrounding construction activity. More than likely he would then also be totally unaware of the fact that his property may have become part of a planned urban renewal complex or a prime prospect for real estate speculators. Subjected to continued harassment by prospective buyers and their agents he would, in all probability, eventually sell his property either by private sale or by means of negotiations leading to expropriation. In any case, the very activity of selling his home may cost him a few years of his life.



This part of the paper will discuss the physical, mental, social and cultural impairments of the aged homeowner during the period of quiet ownership, the negotiation process for the sale of his home and the resulting settling-in period into a new home. A variety of individuals may negotiate with a homeowner. Real estate brokers or their salesmen, owners of construction companies, speculators or agents of expropriating authorities may be involved. For convenience the term "agency" will be now used to identify individuals who directly negotiates with the owner.

The information presented below was gathered through library desk research and thorough in-depth interviews of owners, real estate salesmen and other land buyers. Relevant opinions and facts gained from these interviews are incorporated into the paper and wherever possible confirmed by other research findings.

#### THE AGING PROCESS

As any human being ages, certain characteristics exhibited by him can be directly identified as an age syndrome. P. Handler has effectively defined the aging process in this manner:

"Aging is the deterioration of a mature organism resulting from time-dependent, essentially irreversible changes intrinsic to all members of a species, such that, with the passage of time, they become increasingly unable to cope with the stresses of the environment, thereby increasing the probability of death".<sup>41</sup>

Cruel as this definition may seem, it fits quite well when we consider the continual preying of individuals, earning their living from the real estate business, on any deal which may result in profit, even at the expense of sustained suffering by a member of their species.

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<sup>41</sup>P. Handler, Radiation and Aging, as quoted from N. W. Shock, (ed.), Aging, (Washington, 1960), p. 200.



## PHYSICAL CHANGES

Since 1900, society, through medicine, drugs, automation, therapy and diets, has increased the average life span by twenty years.<sup>42</sup> Basically, what this amounts to is that we are older longer. The individual who is old may cherish or curse added years in his life depending on his physical, mental or financial state. To the younger individual it invariably represents added costs incurred in supporting the older one, either directly or indirectly through taxation, or it may mean a longer wait for his inheritance. What medicine has accomplished in this short period of time will probably require an even longer period of adjustment for society and a concurrent change in its laws and values.

Some people exhibit physical traits of aging very early in their life. Generally arthritis, arterial sclerosis, increased incidence of heart disease, emphysema, and cancer are only a few diseases usually associated with aging although some people have been known to be in better physical shape at seventy than others at twenty five years of age. Many so-called traits of aging are built up over a period of time and manifest themselves at later critical times in a person's life. Overeating or smoking has been proven to contribute to cumulative deficiencies that may affect physical movement or otherwise lead to early incapacity of the individual. Other diseases, besides requiring years to build up to the stage when they become obvious physical deficiencies, may speed up other physical characteristics of aging. Emphysema for example, by restricting the individual's ability to exercise, maintains his strength at a lower level than normal, enhancing

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<sup>42</sup>James Biren, The Psychology of Aging (New Jersey, 1964), p. 20.



the chance of his inability to withstand other diseases.<sup>43</sup>

Insurance companies, relying heavily on statistics from which they derive the probabilities of certain accidents occurring and on which they base their rates have found an increasing propensity for accidents in drivers over sixty years of age. N. W. Shock attributes this to diminished visual acuity, less resistance to glare, hearing loss, impairment of physical movement as well as increased reaction time.<sup>44</sup>

The changes in the body caused by aging are many and vary with each individual. It would be impossible to examine all the symptoms of aging in this paper, suffice it to say that generally speaking, aging impairs the mobility, perception and reaction time of the aging person thereby increasing his physical vulnerability.

#### MENTAL CHANGES

The process of aging does not restrict itself to the physical deterioration of the body, but appears to affect the thinking of the individual as well.<sup>45</sup> It is sufficient that the individual recognizes that physical change is occurring and becomes aware of eventual death for psychological stress to manifest itself in the form of further physical ailments or other psychological malfunctions.<sup>46</sup>

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<sup>43</sup>Julius H. Comroe, Jr., and others, The Lung (Chicago, 1963), pp. 212-213.

<sup>44</sup>N. W. Shock, editor, Aging (Washington, D. C., 1960), p. 138.

<sup>45</sup>Comprehensive Textbook of Psychiatry, op. cit., p. 1529.

<sup>46</sup>Comprehensive Textbook of Psychiatry, p. 1140.





As a person ages, he appears to also become more rigid in his thinking. In countries where little change occurs over time this type of rigidity may help in decision making since experience has taught the elderly the consequent outcomes of alternative courses of action. In rapidly innovative societies, such as the one we are living in, rigid behavior and lack of adaptability is detrimental. The introduction of a new product, for example, requires mental adjustments not only by the user but also by the designer and manufacturer as new uses are found and design changes are made. Important innovations may bring about revisions throughout an industry which demand retraining for at least some of the work force. Braun and Geiselhart carried out some conditioning experiments during 1959. They found older people to be harder to condition to new surroundings, changes in their work assignments and role playing. In fact, age groups between 62 and 84 were virtually unconditionable.<sup>47</sup>

A number of implications could be drawn from this statement not only in relation to the aged's acceptance or understanding of newer negotiation methods or complex expropriation techniques but also with regard to the resulting welfare of the aged should they be removed from his present surroundings.

Since these people assume such strict rigidity, how would expropriation procedures followed by movement to a new environment affect their lives? Aldrich and Mendkoff's research in this area offers some interesting insights. During 1963 they reported that

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<sup>47</sup>Aging, op. cit., p. 154.



"...generally, high social participation and being an active member of a matrix of personal interrelationships seems to be conducive to successful aging and may also have implications for physiological functioning".<sup>48</sup>

Their findings were based on the increased number of deaths in elderly people when uprooted from their environment and placed in institutions as compared to those not subjected to environmental change. Assuming that this information can be corroborated by other research, one could conclude that expropriation or the private sale of a residence owned by an older person is not solely a matter of an economic exchange of goods along with some inconvenience as a result of moving but is also generally a factor in the decreased life expectancy of the owner. Aged homeowners who are fortunate enough to be able to move in with members of their family after the disposal of their home have not been considered as forming part of this group because they are not exposed to a totally foreign environment such as a nursing home or an apartment which caters to the aged.

Assuming that the agency has the right to appropriate part of a persons life, what economic value can there be placed on these declining years and how can the expected life after displacement be calculated and, more importantly, be compared with the life expectancy of those who have not moved? Very little research has been done in this area and it appears as if this question will not be answered for some time to come.

In some cases of expropriation, for example in the acquisition of land for the purpose of adding another two lanes to a freeway, one could argue that the city or agency has a moral right to prevent accidents

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<sup>48</sup>Ibid., p. 237.



by providing safer highways. The prevented injuries to the motorists must be compared to the injury sustained by the homeowner resulting from expropriation. Though it may eventually be up to the philosophers to decide which action is the correct one, it seems clear that the expropriated owner can suffer physical and mental injury.

Wallach and Kogan have found that the individual's confidence in his judgement decreases with age.<sup>49</sup> The implication of this finding in the light of this examination cannot be overemphasized. Although not all elderly persons increasingly rely on others to make their decisions for them, some individuals will be accepted as an authority under certain circumstances. It has been the experience of the author in many instances to discover that a decision suggested to an older individual is quite likely to be accepted if it originated from a person perceived to be an authority on the subject. In a number of instances the advice given involved a selling or retaining of residential real estate decision and the power wielded by this authority figure should not be underestimated. More alarming is the fact that the aged persons knew of the author's involvement as an agent and that he personally stood to make a profit on these transactions and yet they seemed unable to challenge any suggestions that seemed logical. It appeared obvious at that time that a third party would have been of benefit to the aged homeowners, since any unscrupulous agent could have easily taken advantage of these people. Indeed one cannot help but wonder how often the trust placed by the aged in the authority of a "licensee" is abused for personal gain.

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<sup>49</sup>M. A. Wallach, N. Kogan, "Aspects of Judgement and Decision Making: Interrelationships and Changes with Age," Behavioral Science, 1961, Vol. 6, p. 23.





One case related to me by an income tax assessor<sup>50</sup> involved an elderly couple who had been offered \$8,000.00 for the house they had bought forty years before for \$7,000.00. They had come to see him in order to discover how much of this money would be subject to income tax. They mentioned the recent zoning change permitting high-rise construction, as well as the repeated visits by an agent of a construction company who wished to purchase their home so he could build an apartment complex on their property. He offered them \$8,000.00, which they eventually accepted in the belief that they had made a profit of \$1,000.00. They had intended to purchase another home but discovered too late that the cost would be about \$20,000.00. Their property, at the time of sale, was worth in the neighbourhood of \$35,000.00. The owners had made no plans for the future. They had not wanted to sell their home. The repeated visits of the agent had somehow induced them to commit an error which they really could not afford at that time of their life. Whatever the reason for selling the house, it must be apparent that a younger couple would probably not have been this ignorant of the market value of other homes and more specifically of that of their own home.

Zoning bylaws affect the value of property greatly, and often family zoning to high-rise apartment zoning more than doubles its value.

I was informed of another case by an official working in the office of the Superintendent of Insurance.<sup>51</sup> During the time of acquisition of land for the Industrial Airport near Edmonton an agent acting on behalf

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<sup>50</sup> (The names of the persons involved cannot be revealed due to the confidential nature of this interview of October 23, 1970, Federal Building).

<sup>51</sup> (Interview with K. J. Walker at office of The Commissioner of Insurance, November 19, 1970).



of the provincial and federal governments included among all the documents to be signed by the vendor an authorization permitting him to use the funds derived from the sale as an investment in a company controlled by him.

## SOCIAL CHANGES

The social life of individuals decreases with age. A variety of ailments, the demise of life-long friends, a youth oriented culture, lack of purchasing power for those on fixed incomes due to inflation, the generally speeded-up community activities as well as the ever increasing complexities of the surroundings contribute to a form of social withdrawal. Today's society appears to have no time for the old. It is not surprising therefore, that salesmen and agents find older people easy prey. Some of the social changes facilitating the agents task are

1. anticipatory affective withdrawal from ties with external objects.<sup>52</sup> Eventual loss of property or personal possessions is almost certain during life and completely certain upon death. While alive, the tendency of aging individuals is toward simplification of their economic position by converting their possessions to cash or by making presents in an effort to buy attention and love from their friends and family.
2. the location of the nearest close relative often influences the owner when confronted with an important decision. The dependence by the owner will vary based on geographic distance, sentimental attachment, amount of past communication, financial liquidity of both as well as mutual respect. The less

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<sup>52</sup>N. W. Shock, op. cit., p. 284.



dependence is exhibited by the owner the easier the task is usually performed by the agent.

3. the owner's perception of the power and complexities of the agency intensifies feelings of uncertainty and helplessness. The owners, when interviewed, expressed their powerless position in terms of lack of comprehension of the bureaucratic system opposing them, an inability to communicate with civic departments which could mitigate their plight and the unwillingness on the part of lawyers to sufficiently explain their position in terms of alternatives.
4. the death of the husband, who was usually in charge of the important business decisions, leaves the survivor open to exploitation, due to inexperience in judging others' motives and establishing values of commercial or personal goods.

In most cases investigated, it was found that the owners, lacking adequate information sources, had to increasingly rely on the agent for advice as time progressed and the negotiation for the property was carried on. The agent, in most instances, appears to be the only person who shows any sincere interest in the owner or the sale. He invariably gains more control over the latter than he ethically should and often influences the owner into concluding a sale at an unfair price.

The aged homeowner usually has no contact with impartial persons qualified to advise him on real estate matters. He may have to rely on the integrity of the agent to provide the necessary information. The agent, of course, will not endanger his earning potential by volunteering all he knows. His actions in these instances could morally be interpreted as fraud.



It is interesting to note that although independent appraisers are inexpensive and can readily be contacted, the aged homeowner appears to make little use of their services. (Mr. Garfield's last appraisal in this area was 2 years ago). A lack of awareness of existence of the appraisal service appears to be the major obstacle in these cases.<sup>53</sup>

#### CULTURAL TRENDS

Our culture has managed to isolate the aged. The stress on youth, action and innovation has made us try to hide the aged, the sick, and the infirm in institutions. Institutionalization indeed seems to be intended as a means for the removal of a burden or eyesore from the family circle. Hospitalization rates for the aged are higher in America than in Western Europe even though the physical condition of people living in these areas are similar. N. W. Shock has concluded, using the above information, that institutionalization is a function of the general social setting and not of the symptoms displayed by any one individual.<sup>54</sup>

Vinacke and Wilson tend to agree on this point, maintaining that the problem of the aged is related mainly to social isolation. Individual conjugal families become isolated once their children establish their own home. American families are much more independence oriented than the Western Europeans, preventing other members of the family from joining the conjugal family. An avoidance of strain seems to be the major motive.<sup>55</sup>

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<sup>53</sup>(Interview with Hardy Garfield, Secretary, Appraisal Institute of Canada, March 30, 1971).

<sup>54</sup>N. W. Shock, op. cit., p. 261.

<sup>55</sup>Talcott Parsons, Age and Sex in the Social Structure of the United States as quoted in "Dimensions of Social Psychology" (Chicago, 1964), p. 248.





It is interesting to note that occupational families (working together in a family business) show little social isolation.<sup>56</sup> The older members of the family contribute as much as they are able, slowly relinquishing some of their duties in the business thereby allowing themselves to retire in steps over a number of years. This transformation is painfully sudden in families in which the major contributor has a "job" from which he retires, leaving the head of the family without his accustomed function. Whatever status his work had provided him with is gone over night. The loss of this contributory function within the community seems to initiate the anticipatory withdrawal symptoms mentioned earlier.

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<sup>56</sup>Ibid., p. 248.



## THE NEGOTIATION FOR SALE

That older people are at a disadvantage when faced with unsolicited attempts to negotiate for the sale of their home can now be fully evaluated. The negotiations for both expropriation or private sale will more than likely be carried out in the same manner. However, the different approaches used and the varying types of psychological pressure will, in actuality, depend largely on the person representing the agency. This person will, one assumes, use the techniques which have served him best in similar circumstances during the past.

Although exploitation may not be a conscious act on the part of the agent, he may nevertheless be taking advantage of the ignorance or physical and mental weaknesses of the owner. Since the agent is not paid to perform a welfare function, but a cost saving function for his agency, he must either excel in getting the best possible deal or be replaced by someone else. The methods he uses therefore in order to obtain these goals should be evaluated both in terms of legal and of ethical responsibility.

In the process of negotiating for the sale of a home the agent usually represents a concern which has other investments and controls comparatively large financial support. The reason such a concern would wish to purchase some property at present though it requires it for its future development plans is based on an overall cost saving. The developer would not be interested in the house (unless it can be resold and moved) and would therefore only establish a maximum amount they



wished to pay at this time for each lot. The agents duty will be to visit each homeowner concerned to see if he could be induced to sell at less than the stipulated price. Owners not wishing to sell for such an amount will be re-visited again whenever the agent is of the opinion that he can negotiate and reduce the asking price to within the maximum the developer is willing to pay or when the developer decides to increase the amount he is willing to spend for the property.

The owner generally becomes aware of any interest in his property through a variety of channels, the most informal being the neighbourhood gossip. The information received in this manner is not very accurate and often results in building up anxiety in the owner's mind. After the initial shock, in cases of ultimate expropriation where the outcome is certain, the owner will attempt to gain additional information. His lack of knowledge about official channels of communication makes this virtually impossible. Gossip on the topic of expropriation or planned development may subside and the owner may consider the gossip as a false alarm.

The news media may, on occasion, publicize proposed development in his area, showing plans currently under consideration by agencies awaiting approval by some government department. Awareness may again focus on the possibility of moving, but since the owner has not received any official information to that effect he may again discount it as an improbability. An official letter informing the homeowner of pending expropriation may then not be far off.



## THE INITIAL APPROACH--SCANNING

## Expropriation:

The period between receipt of the letter of intent to expropriate and the first visit by the agent appeared to be the most frustrating time. Fear of the unknown, being at the mercy of the agency, not being able to gain information regarding the price to be offered, length of time allowed prior to moving, obtaining of legal aid were just some of the feelings mentioned. One woman had lived in her house for over forty years and had no ideas concerning her uncertain future. She had to give up the pleasure of her garden, her privacy, the intimacy of knowing her house, the routine of shopping, and visiting with her friends, to mention just a few of her grievances. She has been living in a nursing home for over a year, yet she still longs for her house.<sup>57</sup>

Following the letter by the agency, the agent employs a scanning technique whereby he attempts to select the homeowners who, in his opinion, could be brought to the point of selling their home at a price below that set by the agency. He will not waste any time with the owners who have a preconceived high evaluation of their property. He will not mention any prices. The owner will provide him with some indication of what his price may be. Should a price be low enough, then the agent may conclude the sale at the first meeting to prevent the owner from discussing prices with friends or neighbours. Some owners will want to sell quickly and at a bargain since, as discussed earlier, they do not have the capacity to withstand confrontations. The agent, by scanning quickly and closing these deals gains in two ways. Not only is he able to earn some fast

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<sup>57</sup> (Interview with Mrs. Freeman formerly of 11443 - 77 Avenue, December 1, 1968).





commissions, he can also use the selling prices of those homes as an indication of the market price for future negotiations.

The agent appears to have the following advantages over the owner in their initial encounter:

1. He represents a powerful agency which will eventually obtain possession of the owner's property. The only dispute is usually limited to the price the owner is willing to accept. Yet the owner may not consider the expected gain resulting from his holding out as worthwhile considering the added aggravation of future negotiations.
2. The agent is a professional in his field. He is aware of current market prices and the price his agency is willing to pay at this time. He may be required to obtain an option to buy or he may be empowered to make the final agreement. In any case, he will attempt to secure the property for as low as he can (within some basic limits, designed to protect the agency from potential embarrassment). He will not waste his time with potential hard-sell owners, concentrating instead on a quick initial sweep, picking up any good buys on the way.
3. His representations, although based on "professional ethics", are made orally and sometimes not incorporated into the final agreement for sale. These promises are difficult to prove once the sale has been completed. Most final contracts stipulate that all oral agreements are void. This point is possibly the most harassing disadvantage of the owner, since the agent may simulate trustworthiness during the negotiation.



The most common types of oral promises are: the date of physical possession by the agency (the owner may have been assured of some rent free time or of a longer period of occupancy), moving costs to be borne by the agency, allowable removal of certain attachments (guard rails, awnings, ornamental doors, television antenna), real estate commissions are to be paid by the agency, legal fees will be absorbed by the buyer. At the time of signing the agreement for sale the owner may not have remembered to include any oral promises made earlier or he may have relied on the integrity of the agent. Whatever the reason, the owner may discover his loss too late.

4. The agent may indicate an earlier date of planned expropriation than is actually the case or he may provide other information designed to increase the anxiety levels of the owner. Decision making will take place at an accelerated pace resulting in a reduction of the ability to analyse rationally. Comparison tests on intelligence between older and younger individuals have shown some noticeable trends. Older people tend to focus the higher thought processes on simple association rather than toward analysis.<sup>58</sup>
5. The expert legal machinery at the disposal of the agency combined with the complexity and cost of fighting the expropriation proceedings, should no prior settlement be reached, were usually brought to the attention of the owners.

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<sup>58</sup>N. W. Shock, op. cit., p. 176.



Some were also made aware of the fact that arbitration did not always increase the settlement price over the last offer by the agency but does in some cases reduce this amount.

6. The agent may not reach a settlement at the first meeting and yet he may gain vital information regarding the owner's weaknesses which will assist him greatly in designing his arguments for future meetings. He is usually prepared for most eventualities. To the more physically impaired owner he may stress the quality of service, social activities and lack of work required by individuals residing in a nursing home.
7. The agent could be in a position to assist the owner with a variety of services relating mostly to information, which may place the owner at a disadvantage if he considers owing a debt to the agent for these services. Some owners, when interviewed, were not aware of the amount they had reduced their asking price by, they only recall what "a nice man" the agent was.

#### Private Sales:

The points outlined under initial negotiation attempts leading to expropriation apply in part to the endeavor by an agent to purchase the owners property for a private party. The major difference between the two approaches is the undecided outcome of the private sale attempt. The agent must therefore compensate for the loss of his knowledge about the eventual sale of the property. The first meeting is therefore mainly designed to gain information about the owner and his points of view on the topic of a private sale. Since the agent must frequently ensure the



sale of a group of adjacent properties for the larger private development, he must attempt to purchase the whole group together. An option to purchase agreement is most commonly used in those instances.

In negotiating for private sales the agent relies on more hard sell techniques which are discussed below. Advantage 4 above is modified to the extent that instead of the date of possession, the agent may attempt to influence the owner's decision by revealing proposed high-rise developments along the owner's property line which may cause increased noise, the hazard of litter thrown from adjacent high-rises, isolation of his property by surrounding developments, making it practically useless for future development should the owner decide to sell at that time. The force with which any of these implied detrimental forecasts are presented will depend on the perceived success expected by the agent from each item.

Advantage 5 applies exclusively to expropriation negotiations.

#### RECURRING VISITS

It was interesting to note, that some interviewees did not know the number of calls the agent had to make prior to closing the sale. Some owners were interviewed prior to the sale of their property and strongly indicated their unwillingness to sell. A visit within a few days of this statement disclosed that they had sold for no other apparent reason than to avoid thinking about the negotiations.

There was little apparent difference in the price offered or in the extra concessions made in instances where owners sold within six months of the first contact with the agent. As in the cases outlined above, the decision was not based on a higher price, but depended entirely





on removing the anxiety caused by the uncertainty introduced as a result of the negotiations. Their comments seemed to indicate that they recognized the futility of continued ownership and just gave up. The possibility of economic gain by retaining the property and negotiating further did not justify the anxiety generated by this additional wait.

One owner had not sold his house when interviewed. He corroborated the anxiety pressures found in owners who had sold.<sup>59</sup> He explained that he was financially secure and that he was in no rush to move. He exhibited a certain stubbornness which made the negotiations a game rather than a traumatic experience. He disclosed some of the prices paid for the surrounding property. The initial purchases were made for about \$12,000.00, while he expected to receive \$25,000.00 for his property. Three years had elapsed from the date of the first sale. One cannot help but wonder what a seventy year old person can do with \$12,000.00 instead of a house! Prior to the negotiations his life would have been ordered and secure. After the sale, he would have to find substitute housing for the selling price of his house less legal fees, moving expenses, breakage and inconvenience expenses.

On recurring visits, the agent must attempt to discount any advice the owner may have received from relatives, friends or neighbours. The usual honesty of the owner, coupled with his inexperience in negotiations are not too difficult to overcome by the agent who has dealt with many similar purchase situations in the past. His experience and expertise are seldom matched by the owner. The owner's stand is soon overcome. The final settlement may be slightly increased as a result of a holdout,

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<sup>59</sup>(Interview with W. Eichwalden of 11338 - 80 Street, November 14, 1970).



depending on the length of time the negotiations have been proceeding. The evidence gained through primary research would indicate a strong link between the length of negotiations and the final price.

Statistical information relating price changes to the length of time the owner refuses to enter into an agreement is not available. From interviews it has been determined that holdouts over a period of six months receive substantially higher settlements. Publications of arbitrators' decisions have not been examined since it is assumed that the owner will get a fair price at that level of negotiations. One arbitrator of the City of Toronto doubled the highest offer of a city's agent giving some indication of the type of offers being made by agents.<sup>60</sup>

The anxiety level produced by these negotiations seemed to induce temporary neurotic behavior in some owners, obstructing rational decisions and resulting in extremely low settlement on the sale of their property.

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<sup>60</sup>Expropriation: Public Purpose Vs. Private Property, p. 5.



## RECOMMENDATIONS

Although most aged homeowners appear to receive equitable settlements for their properties a few have been taken gross advantage of. It is these few persons that the government has the greatest obligation to protect. Most, if not all of their accumulated wealth is represented in their residence. The provincial government, which is responsible for real estate legislation and enforcement, should attempt to protect these homeowners by the following procedures:

1. Since current legislation and its enforcement do not appear to protect the aged the establishment of a Board of Arbitration consisting of legal, financial and real estate experts, is recommended, designed to protect the aged homeowner from gross exploitation. Such a board would not only act as a deterrent to prospective buyers contemplating exploitation of the aged, but would in effect reduce the pressure to sell exerted by these buyers on the aged, the latter of which has been shown to cause considerable anguish to the owners.
2. This board should review every sale of a residence to an agency empowered to expropriate, a licensed real estate agent or salesman, a developer or a speculator (an owner who does not reside on this property) when the owner is over 60 years old and resides on the property; with a view to ensuring that the aged owner is aware and satisfied with the proceeds of the sale. The sale will not become final



until the review is completed to the satisfaction of the Board. The time taken by the Board's investigation will in itself ensure that the aged homeowner is free to make his decision free from coercion.

3. The Board must be provided with the means to calculate a market value for these homes. The province should establish guidelines to allow standardization in evaluating each case. A "market-plus" concept to evaluate added cost such as moving expense, relocation damage, refinancing, redecorating, professional and inconvenience costs may be found desirable.
4. The Board should receive copies of all correspondence from the agency to the owner concerning the negotiation for sale to assure their awareness of the progress made in these negotiations.
5. The Board must follow up each transaction to its final conclusion by recommending changes in the proposed selling price to be consistent with the standards mentioned in (3) surpa, thus ensuring a modicum of equity in every case.

The percentage of people over sixty years of age is increasing in Alberta. It would appear that the seriousness of this particular problem of the aged will intensify over the next few years. It is recommended that the Provincial Government of Alberta initiate a full scale study into the problem as outlined in this paper which can, for lack of finance, only be considered as a pilot study. A letter of recommendation to this effect has been forwarded to the office of the Premier of Alberta.





## SUMMARY

Aged homeowners facing expropriation or attempts by agents to negotiate a private sale exhibit certain disadvantages which are directly attributable to their age. Examination of present provincial legislation has failed to produce any means of protection other than in cases of fraud, insanity or mental incompetency. As the vendor ages and becomes more and more isolated from current business practices and contemporary standards of ethics he is increasingly less able to deal effectively with the competent and often ruthless professional buyers. These inadequacies are often exacerbated by the physical and mental deterioration that so often accompanies old age. Some mental changes are attributable directly to deteriorating physical health. Other phenomena of aging such as increased rigidity of thought, inability to adapt to new situations, the tendency to convert assets to cash, and the need to avoid stress make the aged particularly vulnerable.

Social and cultural changes contributing to the alienation of the aged are the rapid tempo of society, the increasing complexity of organizations and their communication channels, a tendency toward hedonism in the younger generations, undue societal stress on youthfulness often encouraging the premature removal of the aged to nursing homes and hospitals along with an increasingly noticeable communication gap between age groups.

The agent, representing a legitimate, powerful and often complex agency is a trained professional buyer of properties who is fully aware of the current market and the intricate details of purchasing as well



as the psychological and physical shortcomings of his adversary.

In general, persons over the age of sixty-five cannot be classed as mental incompetents although the disadvantages suffered by many of the aged should be deserving of special protection by the provincial government whenever they dispose of their homes, especially since these homes usually represent their life savings.

No accessible statistics were maintained by any known agency to corroborate the findings of this study, forcing the author to rely heavily on the case studies which, although small in number appear to be representative of the scope of the problem of the aged homeowner.



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